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CERTIFIED MAIL

March 16, 1993

Helen Roback and Helen Dahlberg
P. O. Box 1565
Kamuela, HI 96743

Dear Ms. Roback & Ms. Dahlberg:

Variance Application (V 92-25)
Helen Dahlberg - Helen Roback
Building Setback
Tax Map Key: 1-4-55:68

This 9,243 sq. ft. corner lot in the Nanawale Estates Subdivision Unit was built upon in 1977 by a previous owner. According to Real Property Office information, the house was built in 1973 by a family named Gregory. Two consecutive owners later, Mrs. Dahlberg and Mrs. Roback became the owners in 1981, who, upon selling the house to the Fukushima family recently, found that it was built encroaching into two setback areas, 4.72 ft. in lieu of the required 8 ft. side and 11.4 ft. in lieu of the required front 15 ft.

The Dahlberg-Roback owners are now the sellers and are the applicants attempting to rectify the improperly sited dwelling for the new owner, the Fukushimas. The applicants were not the perpetrators of the wrongdoing. The entire subdivision is zoned RS-10.

After reviewing your application and the information submitted in its behalf, the Planning Director by this letter hereby certifies the approval of your variance request to permit the subject dwelling to remain where sited. The approval is based upon the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property.

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Primarily, the applicants were not the perpetrators of the improper siting of the building. It was the owner in 1973, by the name of Gregory, who wrongly located the dwelling. His whereabouts are unknown. Secondly, the owners who are neighbors have written en masse supporting the request and stating no objection to the variance application.

The physical removing of the violation would become the responsibility of the applicant, who in this case is an innocent party, and thus the significant costs involved in the renovation or removal of the building would have to be born by the wrong persons.

The lack of objections by any of the neighbors helps to minimize the overall effect of the violation.

ALTERNATIVES

There are limited alternatives, none of which appear reasonable -- such as renovating the dwelling, or moving it -- inasmuch as none of the neighbors object to the granting of the variance. The alternatives mentioned would be extremely costly and grossly unfair to be levied ^{upon} by an innocent party.

INTENT AND PURPOSE

The intent and purpose of the building setbacks are to ensure that adequate air, light, space and related spatial considerations are preserved between buildings and property lines in a scale commensurate with the lot sizes in this community. In this case, although two of the four building setback distances are violative of the code requirements, they are countered by the fact that the dwelling is a common acceptance of the situation by a host of neighbors, and no objections from them nor from any reviewing agencies.

Based on the foregoing findings, the variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and adjoining properties.

Therefore the Planning Director has concluded that this request be approved subject to the following conditions:

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1. The petitioners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. Any additions or extensions to the dwelling shall be in full compliance with the zoning code; no future setback variances shall be considered.
3. No ohana dwellings shall be permitted on this parcel while this variance is necessitated.
4. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the Director may proceed to declare this variance null and void.

Although this variance from the zoning code has now been granted, there is another procedure to complete which is under the jurisdiction of the Board of Appeals. Due to the fact that this building is so close to the north boundary, being 4.72 ft. only, the Housing Code (administered by the Building Division of the Department of Public Works) is also being transgressed.

Cases such as yours are taken up separately and usually independently rather than concurrently, because a singular denial of either the zoning code variance or the housing code variance alone would suffice to disallow the request. Zoning code variances are usually suggested first because their filing fee is \$100; the housing code variance to the Board of Appeals is \$200.

With this zoning code approval in hand, your final step in clearing this situation would be to obtain the Board of Appeals' affirmation.

We enclose the information you need for the Board of Appeals variance. The Public Works memo, (dated December 10, 1992) on the subject is also attached.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

DT:mjs/8320D
enclosure

xc: Building Division
West Hawaii Office
Mr. James Dahlberg